

# EXHIBIT D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
UNITED STATES OF AMERICA, : Docket #1:19-mj-08641-  
 : UA All Defendants  
 :  
Plaintiff, :  
 :  
- against - :  
 :  
Liu, Zhongsan : New York, New York  
 : September 16, 2019  
Defendant. :  
 : PRESENTMENT HEARING  
----- :  
 :

PROCEEDINGS BEFORE  
THE HONORABLE JUDGE ONA T. WANG,  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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Interpreter Present

Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 HONORABLE ONA WANG (THE COURT): Good  
3 afternoon -- or good evening, almost.

4 MR. MARTIN COHEN: Good afternoon, your Honor.  
5 Martin Cohen from the Federal Defenders on behalf of  
6 Mr. Liu.

7 THE COURT: Okay. Good evening.

8 Good evening, Mr. Liu. Mr. Liu, are you able to  
9 speak and understand English?

10 [Colloquy through interpreter]

11 MR. ZHONGSAN LIU (THE DEFENDANT): No.

12 THE COURT: Okay. Please be seated. You can  
13 stay seated.

14 All right, are you able to hear and understand  
15 what the interpreter is telling you?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay, can I have the date and time of  
18 arrest, please?

19 MS. GILLIAN GROSSMAN: Yes, your Honor. The  
20 defendant was arrested at 6:21 AM this morning in Fort Lee,  
21 New Jersey.

22 THE COURT: All right. I am Judge Wang. You are  
23 here because you are charged with certain crimes by a  
24 complaint supported by an affidavit. Do you have a copy of  
25 the complaints?

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THE DEFENDANT: No.

THE COURT: Okay. The purpose of today's proceeding is to advise you of certain rights that you have, inform you of the charges against you, consider whether counsel should be appointed for you, and decide under what conditions, if any, you shall be released pending trial.

I'm now going to explain certain constitutional rights that you have. You have the right to remain silent. You are not required to make any statements. Even if you have already made statements to the authorities, you do not need to make any further statements. Any statements that you do make can be used against you. You have the right to be released, either conditionally or unconditionally, pending trial unless I find that there are no conditions that would reasonably assure your presence at future court appearances and the safety of the community.

If you are not a United States citizen, you have the right to request that a government attorney or a law enforcement official notify a consular officer from your country of origin that you've been arrested. In some cases, a treaty or other agreement may require the United States government to give that notice whether you request it or not.

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2 You have the right to be represented by an  
3 attorney during all court proceedings including this one  
4 and during all questioning by the authorities.

5 You have the right to hire your own attorney. If  
6 you cannot afford an attorney, I will appoint one today to  
7 represent you.

8 Do you understand your rights as I've just  
9 explained them?

10 THE DEFENDANT: Yes.

11 THE COURT: I understand that you wish for me to  
12 appoint counsel. And I have before me an Affidavit of  
13 Financial Condition that you have signed under penalty of  
14 perjury. Did you complete that form with the assistance of  
15 Mr. Cohen today?

16 THE DEFENDANT: Yes.

17 THE COURT: Please be aware that you can be  
18 charged with perjury for any false statements in this  
19 affidavit. Also, you must tell the Court if there is any  
20 change to your financial status.

21 Please raise your right hand.

22 Do you swear or affirm that the statements made on  
23 your financial affidavit are true and correct?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay, based on the statements you

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have made on your financial affidavit, I am approving the appointment of counsel. Mr. Cohen will serve as your appointed counsel.

All right, I have before me a complaint containing the charges against you in this case. It is one count of conspiracy to commit visa fraud.

Mr. Cohen, have you received a copy of the complaint?

MR. COHEN: I have, your Honor. I've reviewed the complaint with Mr. Liu with the aid of a Mandarin interpreter, and we waive its public reading.

THE COURT: Okay, Mr. Liu, do you understand the charges against you?

THE DEFENDANT: Yes.

THE COURT: All right, Mr. Liu, you have the right to a preliminary hearing at which the government will have the burden of showing that there is probable cause to believe that the crime for which you are being charged have been committed and that you were the person who committed it. At the hearing you or your counsel would be entitled to cross-examine any witnesses and introduce evidence. However, a preliminary hearing will not be held if you are indicted by a grand jury before the date of a preliminary hearing. I will set the preliminary hearing date at the

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2 conclusion of these proceedings.

3 I'll hear next from the government as to bail,  
4 detention or release. Is there an agreement regarding  
5 release pending trial?

6 MS. GROSSMAN: Your Honor, the parties have agreed  
7 on several proposed conditions for the Court's  
8 consideration with the exception of electronic monitoring,  
9 as to which there is no agreement. May I start with the  
10 agreed-upon proposed conditions?

11 THE COURT: Please.

12 MS. GROSSMAN: First, a \$500,000 personal  
13 recognizance bond cosigned by two financially responsible  
14 persons; second, pretrial supervision as directed; the  
15 surrender of all travel documents with no new applications;  
16 and travel restricted to the Southern and Eastern Districts  
17 of New York, along with the District of New Jersey. And  
18 the government is also requesting electronic monitoring.

19 THE COURT: Okay, and Mr. Cohen or Ms. Grossman,  
20 would you like to tell me where the dispute is regarding  
21 electronic monitoring?

22 MR. COHEN: Sure, your Honor. Just to finish up  
23 with the agreed-upon package would be that Mr. Liu would be  
24 released today on his own signature. The government is  
25 already in possession of his passport. And he would have



one week to satisfy the cosigner provisions.

Your Honor, the dispute is essentially that in our view electronic monitoring is more restrictive than required. Under the Bail Reform Act, the Court needs to impose the least restrictive conditions. Mr. Liu is a 57-year-old man who's never been arrested before. He's worked in the same place for the last 26 years; the last two years he's been in the United States. He has absolutely zero interest in going and doing anything other than to contest these charges. The penalties associated with violating the bail-jumping provisions are far worse than the penalties if he was convicted of the underlying offense. The main purpose for electronic monitoring is to address danger to the community. If -- there are many other ways that Pretrial is able to keep track of individuals that are less restrictive than electronic monitoring. For someone of Mr. Liu's background and circumstances, the Court should really have no concern that the agreed-upon conditions, which is a half-a-million-dollar personal recognizance bond cosigned by two financially responsible people would not be sufficient to reasonably assure his appearance in court as required. Electronic monitoring with a curfew does not significantly add to that in any meaningful way. And so we'd urge the Court not to impose it because it's not

1  
2 necessary.

3 THE COURT: Ms. Grossman?

4 MS. GROSSMAN: Your Honor, we respectfully submit  
5 that electronic monitoring is necessary here to mitigate  
6 against the risk of flight. And we disagree with  
7 Mr. Cohen's characterization that its main purpose is to  
8 mitigate against danger. It does provide a disincentive to  
9 flee, and it is extremely helpful in monitoring a  
10 defendant's whereabouts, especially in a case like this  
11 where the defendant has virtually no stable ties to the  
12 United States. He has been in this country only two years.  
13 He himself acknowledged to Pretrial that all of his  
14 collateral ties are in China. His entire immediate family  
15 is in China, parents, sister, child. He's a lifelong  
16 resident of China.

17 If he were to have an opportunity to return to  
18 China, he would be permanently beyond the reach of the  
19 government and this Court. And importantly here, the  
20 government is alleging that the defendant is a Chinese  
21 government employee. And with the support of the Chinese  
22 government and its virtually unlimited resources, were he  
23 given an opportunity to flee, he could expect assistance in  
24 avoiding prosecution in this case. And, in the  
25 government's view -- you know, unfortunately, defendants

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2 can and do leave the country, even without a passport, all  
3 the time, especially defendants with the kind of  
4 international connections that this defendant has. And so  
5 we submit that electronic monitoring is a reasonably  
6 tailored condition to mitigate against the risk of flight  
7 in this case.

8 THE COURT: Okay, anything else, Mr. Cohen?

9 MR. COHEN: No, your Honor.

10 THE COURT: Now, what's the burden when it comes  
11 to risk of flight?

12 MR. COHEN: It's the government's burden to show  
13 by a preponderance of the evidence that a person both is a  
14 risk of flight and that these are the least restrictive  
15 conditions to address that risk of flight. So we already  
16 have the massive personal recognizance bond and cosigner  
17 conditions already that the Court has already agreed to.

18 THE COURT: All right, but, I mean, a personal  
19 recognizance bond where Mr. Liu's assets would be  
20 insufficient to satisfy that --

21 MR. COHEN: Yes.

22 THE COURT: -- that bond; and if he were to  
23 flee, there is -- I mean, I'm just wondering how that  
24 operates as a burden, particularly in the time period  
25 before the two cosigners are onboard.

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MR. COHEN: There are -- there are lots of things that Pretrial can do to keep tabs on someone. The electronic monitoring is meant to make sure that someone is home and not out getting into trouble. It's not meant to, in our view at least, doesn't do much in terms of countering a risk of flight. I think the government's arguments about what the Chinese government might do in the circumstances are fanciful. You have an individual who's never been arrested who's 57 years old. It seems that it's not, you know, there's -- I guess you can always conjure up some concern about flight risk, but I don't think it's present here. But to answer the Court's question, it's the government's burden. Thank you.

MS. GROSSMAN: Your Honor, unless the Court has questions, I'll rest on my earlier proffer.

THE COURT: Okay, well, I guess maybe I'd like to hear more about the electronic monitoring that the government seeks and how that would mitigate against risk of flight.

MS. GROSSMAN: Well, the electronic monitoring I was envisioning, your Honor, is essentially an ankle bracelet that provides location information about where the defendant is. And although the defendant --

THE COURT: Wait, but do you mean by GPS

1 monitoring or --

2 MS. GROSSMAN: GPS monitoring.

3 THE COURT: -- or are you talking about a  
4 bracelet that signals when it's out of range of the home  
5 base?  
6

7 MS. GROSSMAN: I was thinking of GPS monitoring,  
8 because we're not asking for home detention here, I think  
9 which is one of the reasons it is reasonably tailored.  
10 We're not seeking to restrict the defendant's movements  
11 more than necessary. But GPS monitoring, frankly, there  
12 aren't other strategies that Pretrial has to keep tabs on  
13 someone's whereabouts as effectively. I mean, that is --  
14 it is just an accurate feed of someone's whereabouts. And  
15 no amount of phone calls or communication could possibly  
16 approximate that type of knowledge.

17 And respectively [sic] we do disagree with defense  
18 counsel about the role or sort of the shadow cast by the  
19 Chinese government in this case. The defendant's very  
20 first call today was to a member of the Chinese consulate,  
21 who he was on a first-name basis with. And, you know, a  
22 consulate is, of course, charged with providing passports  
23 and travel documents to its nationals. And we don't  
24 suggest that the defendant will violate the ban on travel  
25 applications, but we do point this out to show that he does

THE COURT: But I guess is there a time delay or  
body need -- doesn't somebody need to be  
g the GPS at all times, for example, to ensure  
Liu isn't going to the airport at any particular  
mean, isn't that a problem?

THE COURT: No, it's even -- I mean, how does  
gate against risk of flight unless you're saying  
e's going to be somebody watching the GPS location  
g 24/7?

THE COURT: Okay. Anything else to add,  
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2 as was proffered on the record today, ties to the Chinese  
3 consulate and Chinese government officials.

4                   Accordingly, I am satisfied that electronic  
5 monitoring in the form of GPS monitoring is the least-  
6 restrictive additional condition that will reasonably  
7 assure Mr. Liu's appearance at future court proceedings.  
8 This finding is without prejudice to a future modification  
9 application after the cosigners have been secured on the  
0 bond.

1                   Accordingly, based on my review of the complaint,  
2 the Pretrial Services Report, the agreement of counsel  
3 where there was agreement and the arguments on the GPS  
4 monitoring piece, Mr. Liu may be released on the following  
5 conditions. He may be released on his own signature, but  
6 this would require also the GPS monitoring to be in place  
7 before securing the two financially responsible cosigners  
8 for the \$500,000 personal recognizance bond; travel is  
9 restricted to the Southern and Eastern Districts of New  
0 York and the District of New Jersey; he is to surrender any  
1 travel documents and make no new applications, to the  
2 extent that has not been completed; pretrial supervision as  
3 directed, with electronic monitoring in the form of GPS  
4 monitoring. Is there anything else that I missed on that  
5 list?



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MS. GROSSMAN: No, your Honor.

MR. COHEN: Your Honor, just I -- I'm not sure the Court mentioned it, that Mr. Liu would have a week to secure the second cosigners?

THE COURT: Yes. I'm sorry, yes. And so the two financially responsible persons, the cosigners, may be secured by Monday, September 23. Okay. Thank you.

MR. COHEN: Thank you very much, your Honor.

THE COURT: Mr. Liu, if you fail to appear in court as required or if you violate any of the conditions of your release, one, a warrant will be issued for your arrest; two, you and anyone who signed the bond will each be responsible for paying its full amount, that is, \$500,000; and, three, you may be charged with the separate crime of bail jumping, which can mean additional jail time and/or a fine.

In addition, if you commit a new offense while you are released, in addition to the sentence prescribed for that offense, you will be sentenced to an additional term of imprisonment of not more than ten years if the offense is a felony or not more than one year if the offense is a misdemeanor. This term of imprisonment would be executed after any other sentence of imprisonment is completed.

While you are awaiting trial I also must warn you

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THE COURT: Okay, I think that's agreed that's

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2 the understanding of everybody here.

3 PRETRIAL SERVICES: Exactly, your Honor. The  
4 location monitoring ankle bracelet (indiscernible at 22:21)  
5 Pretrial Services. Therefore, Pretrial (indiscernible at  
6 20:30).

7 THE COURT: Okay. All right. So ordered.

8 MR. COHEN: Thank you, your Honor.

9 THE COURT: All right. Thank you.

10 MS. GROSSMAN: Thank you, your Honor.

11 THE COURT: Any medical-needs orders that need to  
12 be signed?

13 MR. COHEN: No. He's going to be released on his  
14 own signature now.

15 THE COURT: No, because the bracelet can't be  
16 fitted until tomorrow morning.

17 MR. COHEN: Oh, sorry, your Honor. No, the Court  
18 need not -- Mr. Liu does not need to be incarcerated  
19 tonight in order to assure his appearance tomorrow. He is  
20 going to be -- he'll cosign his bond; the government has  
21 his passport. He'll be back tomorrow morning. He can  
22 report at 10:00 AM to have the ankle bracelet put on at  
23 that time. It's not necessary that he be detained.  
24 It's --

25 THE COURT: Why don't I take a brief, five-

(Whereupon, the matter is recessed.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of United States of America v. Liu, Zhongsan, Docket #19-mj-08641-UA All Defendants, was prepared using digital transcription software and is a true and accurate record of the proceedings.

*Carole Ludwig*

Signature\_\_\_\_\_

Carole Ludwig

Date: September 30, 2019